

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Brian J. KARCHER,

Plaintiff,

v.

Rich DEPIERRO, et al.,

Defendant.

Civil No. 11-2911

MEMORANDUM ORDER

THOMPSON, U.S.D.J.

This matter has come before the Court upon Plaintiff Brian J. Karcher's Motion for Default Judgment against Rich Depierro [docket #18]; and Defendant Richard Depierro having opposed the motion and having filed a Cross Motion to Vacate Entry of Default [20], noting that he had prepared and served a response to the Complaint, but did not realize he must file the same with the Court; and the Court having reviewed and considered the submissions of the parties and without oral argument pursuant to Federal Rule of Civil Procedure 78; and the Court finding that pursuant to Federal Rule of Civil Procedure 55(c), "[f]or good cause shown the court may set aside an entry of default"; and the Court further finding that "[i]n determining whether to set aside an entry of default, the Court looks at (1) whether the plaintiff will be prejudiced; (2) whether the defendant has a meritorious defense; and (3) whether the default was the result of the defendant's culpable conduct" (*Malik v. Hannah*, Civil No. 05-3901, 2007 WL 2892648, *1 (D.N.J. Sept. 27, 2007) (citing *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000))); and the Court further finding that "[a] motion to set aside a default is addressed to the discretion of the court [and a]ny doubt should be resolved in favor of setting aside defaults so that cases

may be decided on their merits''' (*Id.* (quoting *Alopuri v. O'Leary*, 154 F. Supp. 78, 80-81 (E.D.Pa. 1957))); and the Court noting that Plaintiff has not filed an opposition to Defendant's motion; and the Court finding that good cause has been shown to set aside the default and that vacating the default would not prejudice Plaintiff; and the Court further recognizing the procedural impropriety of the motion for default being filed before default had been entered by the Clerk pursuant to Federal Rule of Civil Procedure 55(a);

IT IS on this 6th day of September, 2012,

ORDERED that Plaintiff Brian J. Karcher's Motion for Default Judgment [docket #18] is DENIED; and it is

ORDERED that Defendant Richard Depierro's Cross Motion to Vacate Entry of Default [20] is GRANTED; and it is

ORDERED that Defendant shall file his Answer, flagged as such on the docket, with the Court within 10 days of the date of the filing of this Order; and it is

ORDERED that upon the filing of the Answer entry of default as to Defendant Richard Depierro be vacated and the matter restored to the active case calendar; and it is finally

ORDERED that a copy of this Order shall be mailed to all parties who have not received same by ECF.

/s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.